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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT

In re the Marriage of JULIET I. and TERRY L.
BEARDEN.

JULIET I. BEARDEN,

Respondent,

v.

TERRY L. BEARDEN,

Appellant.

F057634

(Super. Ct. No. CV40588)

OPINION

APPEAL from orders of the Superior Court of Tuolumne County. Kim M.
Knowles, Commissioner.

Terry L. Bearden, in pro. per., for Appellant.

No appearance for Respondent.

-ooOoo-

This is an appeal from temporary orders entered in a contempt proceeding instituted by appellant Terry L. Bearden against respondent Juliet I. Bearden. We will conclude the trial court did not abuse its discretion in making the temporary orders. In any event, as to the orders in question, the appeal has been rendered moot by the 18th birthday of the parties' child. Accordingly, we will affirm the orders.

Facts and Procedural History

The record on appeal is far from complete. However, it appears the marriage of the parties was dissolved some time ago, and in 2003 custody of the parties' children was awarded to appellant. The parties' older child reached the age of majority in May of 2007. The younger child, S., whose custody was in dispute in the present proceeding, was born October 17, 1991; she turned 18, therefore, on October 17, 2009.

At Christmas vacation of 2008, S. went for extended visitation with her mother, respondent. S. refused to return to appellant's home at the end of the vacation period. Appellant sought to have respondent held in contempt for failing to return the child.

At a hearing on the order to show cause on February 10, 2009, the court appointed counsel for respondent and announced it would continue the matter until counsel was available. The court stated it would not interview S. that day because the issue was contempt, not custody. The court stated it would leave in effect all current custody and visitation orders and that S. should "be returned to [appellant] forthwith." The court recessed the proceeding.

After the recess, the court had this to say: "All right. I just spoke with [S.]. [¶] Mr. Bearden, there's no way she's going to come home with you today." The court continued: "I'm going to allow her to stay with her mom right now. It doesn't mean this contempt doesn't go forward; it does. But there's just no way at seventeen years of age I'm going to make her stay with you when she's in that kind of condition. She was shaking. She was that upset." Appellant continued to object that the court was changing custody of the child when the only issue before the court was adjudication of

respondent's contempt. The court disagreed and continued the matter until February 19, 2009, "for further arraignment on the contempt."

The hearing on February 19, 2009, was very brief, with the court setting the matter for contested hearing on contempt for March 26, 2009. When appellant asked the court to return custody of the child to him, the court responded: "At this point, the custody order remains as it is [i.e., custody with appellant], but I'm not going to force [S.] to go back home." After further discussion of issues concerning insurance coverage, the court concluded the hearing.

On March 20, 2009, appellant filed a notice of appeal from the February 10 and 19, 2009, orders. Our record contains no information concerning the March 26 hearing or any other subsequent proceedings, if any.

Discussion

The present appeal concerns temporary orders, not an adjudication of the contempt petition. On review, we determine whether the court abused its discretion. "The precise measure is whether the trial court could have reasonably concluded that the order in question advanced the 'best interest' of the child." (*In re Marriage of Burgess* (1996) 13 Cal.4th 25, 32.)

Appellant does not present any reasoned argument supporting reversal of the orders in question. He claims the orders deprived him of the right to visitation, but the order clearly states that appellant is "allowed to have alternate weekend visitation with [S.] as agreed between [appellant] and [S.]." He also contends the temporary orders prejudice his ability to prove respondent's violation of the custody order in future proceedings, but he does not explain how this is so, and it is not otherwise apparent from the record.

The court clearly found that the child's best interest required placement with respondent until further evaluation and full consideration of the evidence. That finding is supported by the record and no abuse of discretion has been demonstrated.

It is also the case that the courts lost subject matter jurisdiction of the issue of appellant's prospective custody and visitation rights with S. when she turned 18 years of age. (*In re Marriage of Jensen* (2003) 114 Cal.App.4th 587, 595.) Accordingly, the temporary orders of the trial court have expired and the appeal is now moot.

Disposition

The orders are affirmed. Each party shall bear his or her own costs on appeal.

VARTABEDIAN, Acting P. J.

WE CONCUR:

CORNELL, J.

GOMES, J.